

European parliamentary sovereignty on the shoulders of national parliamentary sovereignties: A Reply to Sébastien Platon

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We are really grateful that the Verfassungsblog has been one of the very first forums engaging the discussion on the [Treaty on the democratization of the governance of the euro area \(T-Dem\)](#). While the proposal has emerged in the framework of the current French presidential campaign, and is now widely debated in this context, it has been primarily thought of as a contribution to the ongoing transnational conversation over the future of the European Union. As authors of the proposal, we first wish to thank our colleague Sébastien Platon for launching an interesting discussion about the T-Dem. While he raises a number of points that we wish to respond to, in the hope of fostering what we believe indeed is a much-needed debate, we note that his [blog post](#) converges with our views that “something must be done to increase the democratic accountability of the governance of the Euro Area”; a diagnosis that is indicative of a growing consensus across Europe –recently exemplified by commissioner and long-time member of the Eurogroup [Pierre Moscovici](#), who acknowledged that such an informal body “cannot anymore take its decisions, decide on budgetary policy or on the future of Greece for example late in the night and in secret (*huis clos*)”.

It is not the place here, in the short format of a blog post, to present all the political ins and outs of the T-Dem. A short book presenting these at more length is being published in France ([Seuil, 2017](#)) and translations will become available in the coming months in several European languages. Before coming to a more limited number of observations here (for more, see the chapter « Sur la faisabilité juridique d'un traité de démocratisation de la gouvernance de la zone euro », in Stéphanie Hennette, Thomas Piketty, Guillaume Sacriste, Antoine Vauchez, Pour un traité de démocratisation de l'Europe, Seuil, 2017) and engaging with the arguments put forward by our colleague Sébastien Platon, we would like to make some caveats in order to set the stage for a constructive debate.

First of all, on the treaty format itself: our intention with this format is to bring to the fore a concrete proposal. It appeared to us that offering such proposal in the form of a “treaty” could be a way of escaping the ritual and often rhetorical oppositions that have too often hampered the debate over the future of the EU. It should be clear, however, that the T-Dem is not to be taken as a full-fledged or ‘prêt à porter’ treaty, but rather as a starting point for discussion. As long-time observers and scholars of EU affairs, we are fully aware of the fact that any reformist strategy at the EU level evolves in a legal and political minefield. More often than not, new proposals meet up with a number of crossed vetoes that unfold along a variety national, political and legal lines. While some of the solutions put forward in the T-Dem may appear non-conventional to some EU studies’ specialists, we wish to acknowledge the fact that these solutions all have to be considered in the wider political and legal context of our time. It is hard to downplay the polymorphous crisis and current challenges that the European Union is now facing. It’s no wonder that theories of disintegration have become a new trend, not only in academia but in the larger public as well...

No time to lose

Hence, the T-Dem starts from the premise that we have little time ahead to redress the course of the European project. As a full revision of the EU treaties seems to be out of reach, we suggest a democratic transplant right at the core of the existing system of governance of the Euro Area. For that reason, as indicated hereafter, the T-Dem is not a self-standing proposal but rather a democratic addition to the institutional set-up that has chaotically emerged in the context of the Euro Area crisis. In doing so, we have started from the premise that historically, the European Union has demonstrated impressive flexibility in finding new institutional arrangements when it has

come to face critical junctures (and the responses to the Euro Area crisis are textbook examples in this regard). To a certain extent, the proposed T-Dem assumes that such flexibility can be used to address the current political emergency and to re-direct the European project beyond the current alternative between Brussels' status quo and the nationalistic turn taken by some of our democracies.

First and foremost, we would like to enlighten the overall legal approach that we have taken as we worked on the T-Dem. As Sébastien Platon rightly insists, all efforts undertaken with a view to democratize the Euro Area need to "take into account the specific constraints arising from the EU legal framework". As we have worked towards the T-Dem, we have certainly been very well aware of this. In fact, this is precisely the reason for which we have chosen to propose a Treaty that, so much as it tries to run counter the substantial logic of both the European Stability Mechanism (ESM) and the Treaty on Stability Coordination and Governance in the Economic and Monetary Union, walks the same technical path: that of an international treaty that States can agree to sign and ratify in parallel to their EU commitments. As Sébastien Platon rightly recalls, the ESM Treaty's compatibility with EU Law has indeed been challenged before the CJEU. But, as a matter of fact, it was upheld by the Court, in a decision that we believe is crucial in opening up venues for political and institutional margins of maneuver. In fact, the 2012 *Pringle* ruling by the Court is very much our point of departure, as it affirms, inter alia, that the ESM treaty did not affect common rules on economic and monetary policy (§101) and that, therefore, Member States were not precluded from signing such an international treaty. It seems to us that this line of reasoning (on which States further rested as they also signed the TSCG) can be prolonged and applied to the T-Dem, which merely seeks to democratize the governance of the Euro Area and hardly affects (unlike the MES treaty) the monetary exclusive competence of the EU.

To be sure, if Member States retain the possibility of concluding international agreements in parallel to the EU, it is under the condition that these are "consistent with European Union law" (§109). Again, however, T-Dem is very wary of preserving such consistence. The main innovation proposed by T-Dem is the creation of a Parliamentary Assembly of the Euro Area, endowed with powers of legislation and political control. As it seeks to affirm the Assembly as a democratic counterpart to the existing bodies that are involved in the governance of the Euro Area, and in particular to the Euro Group, T-Dem foresees that the Assembly shall participate to the preparation of the meetings of the Euro Summits, express its views on the Commission's Alert Mechanism Reports or the European Central Bank's annual reports and price stability objectives, or vote on the financial assistance facilities decided in accordance with art. 13 of the EMS treaty. It shall also vote a budget for the Euro Area, and vote on the candidates chosen inter alia for the Presidency of the Euro Group or the Managing Direction of the European Stability Mechanism.

In so doing, we do not believe the T-Dem is inconsistent with EU law –not to mention that T-Dem includes a provision stating that it "shall be applied and interpreted by the Contracting Parties in conformity with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and with European Union law, including procedural law whenever the adoption of secondary legislation is required". The main reason that allows for the argument of compatibility between the T-Dem and existing EU law to be made has to do with the actual current legal standing of the governance of the Euro Area, much of which is the result of political and institutional answers to the Eurocrisis more than it is the result of any particular treaty or, for that matter, any particular democratically-grounded grand design.

The governance of the Euro Area today involves a polymorphous ensemble of institutions among which some EU institutions (the ECB, the Commission) as well as some non-EU, including informal, institutions. In particular, it is important to keep in mind that the Eurogroup's existence is hardly acknowledged by the EU treaties (art. 137 of the TFEU merely mentions its existence and refers to the protocol on the Eurogroup, who itself foresees that "the Ministers of the Member States whose currency is the euro shall meet informally") while the Euro Summits are only explicitly foreseen in the TSCG. In other words, the very existence and role of critical actors of the governance of the Euro Area are mostly informal –and certainly nowhere to be found in EU treaties themselves. Consequently, because much of the democratic imbalances that it seeks to correct have taken root outside EU law, the T-Dem's claim of compatibility with EU law is a strong one indeed: T-Dem does not alter the EU institutional or legal framework in any substantial way.

No Institutional Highjacking

We therefore need to disagree with the characterization that the T-Dem organizes the “highjacking” of “existing bodies of the EU”. In line with the framework determined by the Court in the *Pringle* case, the T-Dem does not “alter the essential character of the powers conferred” on EU institutions (§158). Nor does it allow EU institutions to any new power to make decisions of their own (§161).

Maybe this argument could indeed be made if the TFEU did truly define the role of the Eurogroup; but it does not –and it matters a lot to the T-Dem that article 136 is really about the Council and not the Eurogroup. This is why T-Dem may endow the Eurogroup (together with the Parliamentary Assembly of Euro Area) with legislative powers without affecting its definition by EU treaties (since it is, essentially, non-existent). Let us consider for example the field of fiscal harmonization, a critical domain that falls under the category of “shared competences” in which the EU has repeatedly failed to intervene: in the framework of the T-Dem, the Parliamentary Assembly of the Euro Area and the Eurogroup would jointly have the capacity to draft and adopt the much-needed bill in case the EU keeps refraining to do so. We therefore argue that the T-Dem may very well focus much of its attention on the Eurogroup, and seek to rebalance its powers and role in order to carve out some space for interventions of the new democratic body it creates (the Parliamentary Assembly) without running counter the TFEU. It is along similar lines that we wish to rebut Platon’s observation that the T-Dem runs counter art. 14 of the TFEU: the T-Dem does not alter the legislative, budgetary and political control functions of the European Parliament within the EU. These remain very much untouched by the T-Dem, who merely foresees that some members of the EP become members of the Parliamentary Assembly of the euro zone – whose creation and existence, in parallel to the EU, does not affect any EU institution.

In other words, while Platon is obviously right in insisting that “even though the new structure is officially disconnected from the EU institutional system, it is obviously linked to it”, we do not feel that this is a situation created by the proposed T-Dem. The situation as it exists today is already a situation in which the Euro Area exists, has its own system of governance – one that, also, is “officially disconnected from the EU institutional system”, although “obviously linked to it”. In that, the T-Dem does not create this situation as much as it seeks to better it though democratic enhancement.

This latter observation also answers Platon’s final observation that decisions taken by the bodies that take part in the governance of the Euro Area “would not become EU law”. While very true, this again is not an innovation of the T-Dem but a mere consequence of a pre-existing situation. In fact, the CJEU itself has already ruled that decisions taken by the Euro Group are not “EU Law” –and has therefore rejected as inadmissible not only an application against a Euro Group decision but also decisions by the Commission and the European Central Bank to the extent that they are decisions taken in the framework of the EMS and not the EU treaties ([CJEU](#), 20 Sept. 2016, *Mallis and Malli v. Commission* and other cases C-106/15P). Consequently, as much as the question Sébastien Platon raises at the end of his post is relevant (what about the liability of Member States for decisions taken within the Euro Area?), it is hardly one that is created by the T-Dem.

Democratizing the Euro Area

Sébastien Platon also seems to understand that the T-Dem is based on “defiance of the European Parliament”. We first wish to insist that it is proposed that one fifth of the members of the Parliamentary Assembly of the Euro Area would be members of the European Parliament; and that several provisions of the T-Dem (such as, for instance, art. 3§2) insist that “[the Parliamentary Assembly] shall work in close cooperation with the European Parliament”. Defiance for the one truly democratic institution of the European Union is certainly not in order within the T-Dem, as the T-Dem itself seeks to enhance democracy. The T-Dem’s realm, however, is not democratization of the EU itself but of the Euro Area. The T-Dem therefore was not thought in defiance from the EP; rather, it respects the EP as an EU institution and merely seeks to associate it to the governance of the Euro Area.

In other words, there are both technical and political reasons for which the T-Dem proposes that 4/5 of the Parliamentary Assembly it creates be representatives of National Parliaments and 1/5, representatives of the EP. The technical reason is precisely that the T-Dem does not alter the existence or competences of EU institutions –

among which the EP plays a prominent role. The political reason is that the decisions and policies that are effectively taken in the framework of the Euro Area governance (from the ‘European Semester’ to the ESM conditionality mechanism) are very much intertwined with national policies and have a great impact at the national levels. In fact, the dramatic ways in which Greece’s economic and social choices have been restricted by the management of the Greek debt crisis in 2015 precisely count as one of the most compelling examples that have convinced us – and many other European actors and citizens – that democratization had become both an emergency and a necessity. What the T-Dem really seeks to avoid, first of all, is the repetition of a situation in which any country of the Euro Area would be compelled to drastically lower the pensions or other benefits it serves, based merely on decisions taken by the governance of Euro Area that has emerged not so much from the EU treaties but from a combination of informal practices and their partial consolidation in treaties such as the EMS or the TSCG. Instead, what the T-Dem seeks to affirm is the necessary association of national democratic representatives to decisions taken in the realm of the Euro Area.

More generally, the T-Dem aims at creating the democratic institutional framework in which the necessary improvements of the governance of the Euro Area in terms of fiscal and social harmonization, budgetary capacity, and economic cooperation will be able to take place. If the governance of the Euro Area is to take these much-needed steps, it will necessarily enter the very core of national social and democratic pacts, thereby touching upon national parliaments’ constitutional competences. Suffice it to mention the fact that taxes and budget have been –from the Magna Carta to the ‘no taxation without representation’ principle of the first American colons- integral to the formation of parliamentarism. Even those who were most hostile to the interference of national parliaments in EU affairs have now acknowledged the fact that the emerging veto power of national parliamentary assemblies in an increasing number of EU affairs (from the Bundestag much expected vote on the Greek bailout to the Wallon Parliament’s position in the Ceta trade agreements) is putting the whole governance of the European Union at risk of paralysis. Still, the T-Dem insists on including a share of MEPs in the Parliamentary Assembly of the Euro Area. It is not the place here to discuss whether the proposed share is important enough; this is certainly a matter of discussion. Rather, we would like to point out that a hybrid composition is necessary to ensure tight coordination with the EU as a whole and allow for a process of socialization of members of national parliaments to the European ethos that is much needed in such a transnational political arena.

In other words, we certainly have no defiance for the European Parliament as such. We simply believe that it is critical to “Europeanize” national parliament members and to make them work together with European parliament members. To a large extent, our proposal is close in spirit to the view expressed by Joschka Fischer in his Berlin speech of 12 May 2000 (and again in his “Europeanizing Europe” op-ed of 27 October 2011). When in 2000, Fischer proposed to create a European Chamber emanating from national parliaments (and composed of national parliament members) and argued that this would be a crucial step towards political union in Europe, no one in France – and particularly in the French left – bothered to answer. In a way, this is the failed dialogue that we are now pursuing; our proposed Assembly of the Euro Area (which could become a European Assembly if and when all EU countries join the Euro) is close to the European Chamber advocated by Fischer. Like him, we believe that a genuine European parliamentary sovereignty needs to be built upon the shoulders of national parliamentary sovereignties, not against them.

To be sure, the T-Dem does not pretend to resolve all the pending technical issues – including that of the justiciability of the decisions taken within the Euro Area. Nor does it, for that matter, pretend to be fully implementable as such. T-Dem is a proposal, and we are very grateful for the opportunity that the Verfassungsblog has started to grant us for discussing and hopefully bettering it.

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